

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
and
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

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WRIT PETITION No. 16381 of 2007
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ORDER: (Per the Hon'ble Smt. Justice T. Meena Kumari)

This writ petition is filed challenging the order dated 11.6.2007 passed by the Central Administrative Tribunal, Hyderabad Bench in O.A. No. 362 of 2006.

The respondent herein was appointed as Substitute Bungalow Peon vide Office Order No. P (C)/49/2005 dated 13.5.2005. One of the conditions stipulated in the said appointment letter is that on completion of 120 days of continuous service he is entitled for temporary status and he may be considered for posting as Substitute against posts of Gangman/Khalasi etc. in case the officer is transferred out of the Railway or retires from service or is transferred to a post for which there is no Bungalow peon or in the event of deputation/training/long leave (more than 3 months) of the officer. It is further stated therein that the services of a Bungalow Peon should be subsequently regularized in the same unit on satisfactory completion of 3 years continuous service. The respondent accordingly reported for duty on 13.5.2005. However, before he could complete 120 days to attain temporary status as stipulated in the appointment letter, he was served with a notice dated 17.8.2005 informing the decision to terminate his services as Substitute Bungalow Peon duly giving 14 days notice from 17.8.2005. Aggrieved, the respondent – applicant filed O.A. 362 of 2006 before the Tribunal seeking a direction to the CPO/SC to re-

engage the applicant as a substitute/B.Peon or casual labour by declaring the termination letter No. P (C) 269/Gr.D/S.B. Peon dated 31.8.2005 as illegal. The Tribunal, having considered the matter with reference to the decision of the apex Court in **Miss Sujata Obrai v. Union of India & Others**^[1] wherein it was held that an applicant acquires a right to the post only as per the terms of appointment, held that the order of termination of the applicant has not been issued in accordance with the terms and conditions of the appointment letter dated 13.5.2005 and accordingly set aside the order dated 31.8.2005. As against the said order passed by the Tribunal, the petitioner filed this writ petition.

Heard the learned standing counsel for Railways Smt. Pushpender Kaur and perused the material available on record.

Learned standing counsel tried to convince this Court that as the respondent did not come up to the expectations of the employer, his services have been terminated and that the employee would be entitled for temporary status only on completion of 120 days of continuous service but the petitioner had not completed 120 days of continuous service and therefore the termination of the respondent cannot be said to be illegal or arbitrary. It is further contended that the respondent had been issued with a prior notice of 14 days. However, the material available on record discloses that the respondent had completed 110 days before his termination from service. In the termination order dated 31.8.2005 the main reason mentioned was that the respondent had not been able to pick up basic work and had no aptitude for Bungalow Peon work as reported by the same officer under whom he was working. The contention of the learned counsel for the respondent before the Tribunal was that in the notice dated 17.8.2005 there is no mention

about the inability of the respondent to pick up the basic work and that he has no aptitude for Bangalow Peon work and it is only after second thought the said comments have been made in the termination order dated 31.8.2005. The material available on record does not disclose that the respondent was communicated with any remark of his unsatisfactory work at any point of time. Apparently, the notice dated 17.8.2005 does not disclose that the respondent could not pick up the basic work of the post held by him. There is no enquiry as to whether the respondent is suitable for absorption in regular establishment. It is also to be observed that no material is placed before this Court with regard to the unsuitability of the respondent for the post which he was holding. The Tribunal rightly relied upon the decision of the apex Court in *Miss Sujata Obrai v. Union of India and Others* (cited (1) supra) wherein it is held that an applicant acquires a right to the post only as per the terms of appointment. As the order of termination of the applicant has not been issued in accordance with the terms and conditions of the appointment letter dated 13.5.2005, the Tribunal rightly allowed the O.A. filed by the respondent – applicant and we find no error or infirmity in the said order warranting interference of this Court.

We find no merit in this writ petition. It is accordingly dismissed.

However, as time granted by the Tribunal to reinstate the respondent – applicant is expired, we extend the time for compliance of the order passed by the Tribunal for a period of four weeks from the date of receipt of a copy of this order.

T. MEENA KUMARI, J.

G. CHANDRAIAH, J.

Date: 02-08-2007.

MVB.

[\[1\]](#) (1987 (A) SLR (CT) 625